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VIA ECF AND FACSIMILE (212) 805-0426

Honorable Laura Taylor Swain
United States District Judge
500 Pearl Street
New York, New York, 10007

MEMO ENDORSED

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Jeffrey Zucker*

F. Joseph Dunn*

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William Graefe, Jr.*

Gregory L. Kallet*

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Re: Mister Softee, Inc., et al. v. Tsirkos
Case No.: 14-CV-1975 (LTS)

Dear Judge Swain:

I represent the Plaintiffs. I am writing pursuant to Local Rule 37.2 to request an informal conference with the Court for a pre-motion discovery conference because the Defendant has failed to respond to Plaintiffs' written discovery despite several extensions of time to do so.

On September 17, 2014, Plaintiffs served written interrogatories and document requests (the "Discovery") on counsel for the Defendant. The responses to the Discovery were due on October 17, 2014. Mr. Goldman, counsel for the Defendant and an associate in the office of Mr. Klein, acknowledged service of the Discovery but requested an additional two weeks to respond because he and Mr. Klein were in trial in Atlanta, Georgia, at the time the responses were due. Plaintiffs agreed to the extension which moved the response deadline to October 30, 2014.

On October 31, 2014, Plaintiffs contacted Mr. Goldman because the responses to the Discovery were not received. Mr. Goldman advised that he would provide the responses by November 4, 2014. Unfortunately, Mr. Goldman experienced a family emergency that required him to be out of the office for a period of time. As a result, Plaintiffs agreed to give Defendant additional time to prepare the Discovery responses.

On December 3, 2014, Plaintiffs inquired as to the status of the Discovery responses. Plaintiffs also requested dates for the Defendant to appear for his deposition. Mr. Goldman advised me that he would speak to his client and provide me with an update regarding the status of the Discovery by December 5, 2014.

On December 5, 2014, Mr. Goldman advised he would serve me with the interrogatory answers by December 8, 2014, but that he would not have the documents. He also advised his client was unavailable for his deposition until after January 1, 2015.

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This morning, Mr. Goldman assured me the interrogatory answers would be served later today. As of the filing of this letter, however, the interrogatory responses have not served on me.

Accordingly, the Defendant has failed to timely respond to the Discovery despite ample opportunity to respond and Plaintiffs' efforts to accommodate Defendant and his counsel's scheduling difficulties.

Pursuant to Local Rule 37.2, Plaintiffs respectfully request an informal conference to resolve the outstanding discovery issues or, in the alternative, permission to file a formal motion to compel the Discovery responses.

Furthermore, due to the outstanding written discovery issues and the Defendant being out of the country for the holidays, Plaintiffs have also been unable to schedule Defendant's deposition. As a result, the discovery deadline and dispositive motions deadlines are approaching before the Plaintiffs will have an opportunity to finish discovery. According, Plaintiffs also respectfully request an extension of: (1) the deadline for fact discovery from January 12, 2015 to January 30, 2015; and (2) the deadline to file dispositive motions from January 9, 2015 to February 13, 2015.

I very much appreciate the Court's attention to this matter. I am available at the Court's convenience if the Court has any questions.

Respectfully submitted,

FISHER ZUCKER LLC

/s/ Frank A. Reino
Frank A. Reino

FAR:me

cc: Justin Klein (via ECF)

This case is now referred to Magistrate Judge Ellis for General Pre-trial Management. Counsel are directed to contact Judge Ellis' chambers.

SO ORDERED:


HON. LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE